

IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF NORTH CAROLINA
WESTERN DIVISION

No. 5:08-CR-19-1FL
NO. 5:11-CV-775-FL

LORENZO TRENELLI DAVIS,)	
)	
Petitioner,)	
)	
v.)	ORDER
)	
UNITED STATES OF AMERICA,)	
)	
Respondent.)	

This matter comes before the court on the government's motion for revocation of supervised release (DE # 32) and petitioner's motion pursuant to 28 U.S.C. § 2255 to vacate, set aside, or correct sentence (DE # 43). The government, in response to the § 2255 petition, concedes that petitioner's motion to vacate sentence should be granted.

On May 5, 2008, petitioner pleaded guilty to felon in possession of a firearm, in violation of 18 U.S.C. §§ 922(g)(1) and 924. The court sentenced petitioner to a term of thirty-eight months' imprisonment, followed by a three-year term of supervised release. Petitioner was released from custody on March 7, 2011, and the term of supervised release commenced. On October 1, 2011, the government filed its motion for revocation of supervised release, and an order for arrest was issued on December 19, 2011. Petitioner was taken into custody on June 27, 2012, and a supervised release revocation hearing was scheduled by the Court for September 6, 2012.

In light of United States v. Simmons, 649 F.3d 237 (4th Cir. 2011) (en banc), petitioner does not have a prior conviction of a crime punishable by imprisonment for a term exceeding one year. A necessary element of the crime of conviction is therefore lacking. See 18 U.S.C. § 922(g)(1).

Where the government waives any statute of limitations defense to petitioner's § 2255 motion and concedes that petitioner's motion to vacate sentence should be granted, and where the court, having reviewed the record, finds petitioner's motion meritorious, said motion is GRANTED and the judgment of conviction and sentence dated July 14, 2008 is VACATED. The motion for revocation of supervised release (DE # 32) is DENIED, and the clerk of court shall remove from the court's calendar the hearing scheduled for September 6, 2012. Petitioner is ORDERED to be released from federal custody, subject to pending detainers, if any, unless some cause be shown by the government on or before noon on August 27, 2012, why petitioner is not now entitled to this relief.

SO ORDERED, this the 24th day of August, 2012.



LOUISE W. FLANAGAN
United States District Judge